Supreme Court, U.S.
FILED
JAN 13 1983
ALEXANDER L. STEVAS
CLERK

No. 82 - 829

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In The
SUPREME COURT OF THE UNITED STATES

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October Term, 1982

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In Re: Fine Paper Antitrust Litigation
MDL 323

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STATE OF ALASKA, et al,

Petitioners,

v.

BOISE CASCADE, et al,

Respondents.

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On Writ Of Certiorari To The
United States Court Of Appeals
For the Third Circuit

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# PETITIONER'S REPLY BRIEF

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# PETITIONER'S REPLY BRIEF

## I.
## INTRODUCTION

Petitioners submit this reply for the limited purpose of correcting Respondents' distortion of the record on two matters pertaining to the scheduling of discovery and trial and to the partial directed verdict. With respect to both, Respondents have perpetuated the court of appeals' misapprehension of the record, and have disregarded both the record and Petitioners' efforts to correct the court of appeals' misapprehension in their petition for rehearing.[1]

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1 At A62 and A53-A54.

## II.
## SCHEDULING OF DISCOVERY AND TRIAL
## (Petition, pp. 9-20, 42-53)

Respondents argue[2] that Petitioners have no cause to complain of the ultimate October, 1980 trial setting, inasmuch as Petitioners stated during the June 16 pre-trial conference[3] that they would need until September "to accomplish everything", i.e. the completion of myriad pre-trial matters, including the receipt, review and analysis of over 100 deposition transcripts not yet available from the court reporter,[4] the preparation of the second pre-trial memorandum required by the district court, and the designation and counter-designation of deposition testimony and exhibits to be used at trial, and the resolution, by negotiation

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2 Respondents' Brief, p. 9.
3 C/A App. pp. 2068-2072 (Tr. June 16, 1980 Hrg., pp. 46-50).
4 Petition, pp. 15-17.

or court ruling, of evidentiary objections with respect thereto, all of which would have made an orderly and effective presentation at trial possible. As the record clearly reflects,[5] however, Petitioners' reference to September at that time was based on the expectation that their cases would be tried with the cases of the Certified Plaintiffs and the Minority States in late September. The reference to September became meaningless, however, once Petitioners' cases were effectively "back-burnered" by the district court's decision not to try the cases together in September, as contemplated in June,[6] but rather to determine a date for Petitioners' trial "at a later time."[7]

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5 C/A App. pp. 2068-2072 (Tr. June 16, 1980 Hrg., pp. 46-50) and 2092-2093 (Tr. June 16, 1980 Hrg., pp. 88-89).

6 C/A App. pp. 2092-2093 (Tr. June 16, 1980 Hrg., pp. 88-89).

7 C/A App. pp. 4982-4983 (July 30,

That decision by the district court effectively precluded Petitioners from meaningful access to Respondents and the court, who were then focusing their attention on the trial of the Certified Plaintiffs and Minority States, to attend to the pre-trial matters referred to by Petitioners in June. Petitioners' ability to accomplish those matters was thus abruptly halted - to be suddenly set in motion by the district court's later scheduling of an October trial on barely a week's notice.[8]

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1980 letter from the Honorable Joseph L. McGlynn, Jr. to Harold E. Kohn (liaison counsel for Certified Plaintiffs) and Patrick W. Kittredge (liaison counsel for Respondents), with a carbon copy to James Kirkham Johns (liaison counsel for Petitioners).

8 Petition, p. 18.

## III.
## PARTIAL DIRECTED VERDICT
## (Petition, pp. 22-26,53-55)

Respondents argue[9] that Petitioners were not prejudiced by the district court's partial directed verdict because Petitioners never paid the retail prices fixed by the merchants and Respondents, inasmuch as they purchased at bid prices. The record, however, contains evidence not only of purchases at the very retail prices fixed by the merchants and Respondents, but in addition, an economist's testimony establishing that bid prices were related to the retail price level fixed by the merchants and Respondents.[10]

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9 Respondents' Brief, pp. 10-11.

10 Petitioners' second pretrial memorandum, ¶ ¶ 8-21, 27, 33-36, 47, and 65 (regarding impact and damages) at C/A App. pp. 2440-2602, 2620-2643, 2674-2718, 2792-2796, 3204-3223, 3230-3241, 3490-3554, 3567-3571, 3590-3597, 3622-3623, 3754-3757, 3761-3766; Trial Transcript, Volume 27, pp.

## IV.
## CONCUSION

Petitioners respectfully submit that the Petition For Writ Of Certiorari should be granted.

DATED: January 12, 1983.

Respectfully submitted,

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27.48-27.147 at C/A App. pp. 7024-7120 (specifically, C/A App. pp. 7027-7028, 7030-7032, and 7056-7118).